



OFFICE OF LEGAL AFFAIRS  
EXTERNAL OPINION

External Opinion # EX-2005-1001

**To:** Anne Milne  
Director  
Utah Legal Services, Inc.  
205 North 400 West  
Salt Lake City, UT 84103

**Date:** March 7, 2005

**Subject:** **Whether Work with Law Students May Count Towards PAI Requirement**

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You asked this Office for an Opinion regarding whether the costs relating to Utah Legal Services (ULS) staff attorney time spent working with and supervising law students volunteering with ULS may be counted toward ULS' Private Attorney Involvement (PAI) requirement under 45 CFR Part 1614.

***Brief Answer***

No, ULS may not count costs related to staff attorney time spent supervising and working with law student volunteers towards ULS' PAI requirement.

***Background***

For more than 20 years, LSC has had a formal requirement that recipients take affirmative steps to involve private attorneys in the delivery of legal assistance to eligible clients.<sup>1</sup> Specifically, 45 CFR §1614.1 requires that

34). Prior to the adoption of Part 1614, LSC instituted a PAI requirement with the regulation published in the Federal Register on December 14, 1981 (46 Fed. Reg. 61017). LSC amended the PAI requirement with the publication of Instruction 83-6. 48 Fed. Reg. 53763 (1983). Since incorporating the PAI requirement into Title 45 of the Code of Federal Regulations, LSC has amended Part 1614 twice, in 1985 (50 Fed. Reg. 48586 (November 23, 1985))

by devoting funds to that effort. 46 Fed. Reg. 61017 (December 14, 1981). As the preamble to the 1985 revision to Part 1614 states:

PAI, when used effectively, expands the base of attorneys representing the poor . . . . Widespread use of PAI promises to make available to eligible clients a greater diversity in services and a higher degree in specialization than would necessarily be available through a necessarily limited number of staff attorneys.

50 Fed. Reg. 48586, 48587 (November 26, 1985).

ULS would like to be able to count costs related to time spent by ULS staff attorneys supervising its volunteer law students toward ULS' PAI requirement. To that end, ULS have provided us with the following information on its volunteer student program.

ULS has law students from the J. Reuben Clark Law School at Brigham Young University and the S.J. Quigle2c0co



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determined that allowing the costs related to such contracts to be counted toward the PAI

Even if the law students may not, themselves, be considered “attorneys,” there is an issue as to whether supervision of law students by ULS staff attorneys may, nonetheless, be considered within the range of “support” activities set forth in §1614.3(b)(2) (such as the provision of training, technical assistance, research, advice and counsel by the recipient or making available the use of recipient resources) which recipients may undertake to meet the PAI requirement. ULS argues that because law student volunteers are more likely to become volunteer lawyers after graduation, time spent working with law student volunteers should be interpreted as an investment in future increased private attorney involvement. As such, ULS suggests that the spent by ULS staff attorneys supervising law students should be counted toward the PAI requirement.

It is true that Part 1614 anticipates and permits “support” services as part of a PAI program.<sup>5</sup> However, implicit in this paragraph is the notion of the support activities may be provided. ULS would read the regulation to include the provision of such support activities to law students who may, , become private attorney volunteers. We do not believe that such a broad reading of the regulation is sustainable. Rather, we believe that §1614.3(b)(2) refers to support provided by the recipient to persons who are private attorneys.

The policy underlying the PAI requirement is to provide an incentive and methods for recipients to engage with the private bar to increase the number of currently practicing attorneys providing legal assistance to the eligible client population on a current basis. None of the support or indirect delivery activities listed in §1614.3(b)(2) expressly include the supervision of law students or discuss activities done solely as an “investment” in potential future private attorney involvement, nor is there anything in the regulatory history of Part 1614 to suggest otherwise. Although §1614.3(b) is expressly non-exhaustive in its list of support or indirect activities which may properly be considered within the ambit of a PAI program, there is nothing in the regulation or regulatory history to suggest that such other permissible activities would not have to involve current private attorneys.

Since the adoption of the PAI requirement,

Services of Southeast Nebraska. That Opinion found that financial support provided to a law school clinical program could be counted toward the PAI requirement because the Clinic provided direct delivery of legal assistance to eligible client. The letter specifically notes that the arrangement between the recipient and the Clinic requires the Clinic to accept cases on referral from the recipient and that the Clinic, via its students acting on the law school faculty, was providing representation to some 300 eligible clients annually. In that case, the supervising attorney working at the Clinic was a "private attorney" under Part 1614. Although that opinion does note, approvingly, that support for the clinic encourages the involvement of future lawyers, the opinion does not suggest that encouraging the involvement of future lawyers is, itself, a sufficient PAI activity.

In summary, where, as here, the proposed activity does not involve current private attorneys in any way, the activity cannot be considered a PAI activity.

Very truly yours,



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